

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

BRIAN M. LOWENTHAL,	)	Case No. 2:25-cv-04547-CV-JDE
Plaintiff,	)	
v.	)	ORDER ACCEPTING FINDINGS
	)	AND RECOMMENDATION OF
WILSHIRE COMMERCIAL	)	UNITED STATES MAGISTRATE
PROPERTIES LLC, et al.,	)	JUDGE
Defendants.	)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file, including the Complaint (Dkt. 1), the Order re Complaint issued by the assigned magistrate judge (Dkt. 7, “Order re Complaint”), and the Report and Recommendation of the magistrate judge (Dkt. 9, “Report”). Plaintiff did not file a timely objection to the Report or seek additional time in which to do so. The Report is approved and accepted.

After the deadline to file objections to the Report, Plaintiff filed an “Amended Complaint” (Dkt. 11, “Amended Complaint”), a Motion to Reopen Dismissed Action” (Dkt. 12, “Motion to Reopen”), and an Emergency Motion for Temporary Restraining Order (Dkt. 13, “TRO Request”).

1 As the case had not been closed or dismissed, the assigned magistrate  
2 judge denied the Motion to Reopen as moot. Dkt. 13.

3 As to the Amended Complaint, although the magistrate judge, in the  
4 Order re Complaint, provided Plaintiff an option to file an amended complaint  
5 by June 11, 2025, Plaintiff did not do so. As such, the Amended Complaint  
6 was filed in violation of the Order re Complaint, rendering it subject to being  
7 stricken. Even were the Court to consider the substance of the Amended  
8 Complaint, it cannot proceed. The Amended Complaint asserts a single claim  
9 for “Declaratory Judgment” under the Declaratory Judgment Act, 28 U.S.C.  
10 §§ 2201 and 2202, naming U.S. Department of Housing and Urban  
11 Development (“HUD”), the U.S. Department of Veteran Affairs (the “VA”),  
12 and “Wilshire Properties” as defendants. Dkt. 11 at 1-2. As to HUD and the  
13 VA, “[a]bsent a waiver, sovereign immunity shields the Federal Government  
14 and its agencies from suit.” Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471,  
15 475 (1993). Further, “[t]he Declaratory Judgment Act . . . does not provide a  
16 waiver of sovereign immunity.” Alter v. U.S. Supreme Ct., 2023 WL 4873627,  
17 at \*3 (C.D. Cal. July 31, 2023). Thus, Plaintiff may not sue HUD or the VA  
18 under the Declaratory Judgment Act. As to Wilshire Properties, the  
19 Declaratory Judgment Act does not create an independent cause of action or  
20 independently confer jurisdiction; rather, it gives district courts discretion to  
21 award declaratory relief. See Countrywide Home Loans, Inc., v. Mortgage  
22 Guar. Ins. Corp., 642 F.3d 849, 853 (9th Cir. 2011). Federal courts must  
23 “properly derive [jurisdiction] from the underlying controversy between  
24 litigants.” Id. The Amended Complaint sets forth no viable, independent basis  
25 for federal jurisdiction as to any purported controversy between Plaintiff and  
26 Wilshire Properties. As such, the Amended Complaint cannot proceed.

27 Lastly, in his TRO Request, Plaintiff seeks an order preventing a state  
28 court unlawful detainer action and eviction from proceeding. “[I]njunctive


1 relief [is] an extraordinary remedy that may only be awarded upon a clear  
2 showing that the plaintiff is entitled to such relief.” Winter v. Nat. Res. Def.  
3 Council, Inc., 555 U.S. 7, 22 (2008). A preliminary injunction is appropriately  
4 used to preserve a party’s rights pending resolution of the merits of the case.  
5 See Big Country Foods, Inc. v. Bd. of Educ. of the Anchorage Sch. Dist.,  
6 Anchorage, 868 F.2d 1085, 1087 (9th Cir. 1989). To obtain such relief, a  
7 moving party must show: (1) a likelihood of success on the merits; (2) a  
8 likelihood of irreparable harm in the absence of preliminary relief; (3) that the  
9 balance of equities tips in favor of the moving party; and (4) that an injunction  
10 is in the public interest. Winter, 555 U.S. at 20. The same standard applies to  
11 both preliminary injunctions and temporary restraining orders. See Henry  
12 Schein, Inc. v. Cook, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016); Niu v.  
13 United States, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011). A request for  
14 injunctive relief should be denied when based on a complaint that fails to state  
15 a claim. See, e.g., Smith v. Cal. Dep’t of Corr. & Rehabs., 2020 WL 1503431,  
16 at \*4 (E.D. Cal. Mar. 30, 2020) (“[W]ithout a viable complaint the court  
17 cannot assess plaintiff’s likelihood of success on the merits[.]”), adopted by  
18 2020 WL 2126831 (E.D. Cal. May 5, 2020); Jaax v. United States, 2008 WL  
19 4630559, at \*2 (C.D. Cal. Oct. 17, 2008) (denying ex parte motion for a TRO  
20 where movant did not show “a probability of success on the merits because his  
21 complaint, as presently formulated, fails to state a claim on which relief may  
22 be granted”); Most v. Pritzker, 2020 WL 4582593, at \*2 (S.D. Ill. Aug. 10,  
23 2020) (denying motion for TRO and preliminary injunction because, “[a]s  
24 Plaintiff has failed to state a viable claim for relief, he has no reasonable  
25 likelihood of success on the merits”). Here, as Plaintiff has not alleged a viable  
26 claim, injunctive relief is not available. As such, the TRO Request is denied.

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1 Therefore, for the foregoing reasons, IT IS HEREBY ORDERED that:  
2 (1) the TRO Request (Dkt. 13) is DENIED; and (2) Judgment shall be entered  
3 dismissing this action with prejudice.  
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6 Dated: 7/23/25

  
CYNTHIA VALENZUELA  
United States District Judge